



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

May 31, 2018

**BY EMAIL AND ECF**

The Honorable Ronnie Abrams  
United States District Judge, Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

**Re: United States v. John Galanis, et al., S3 16 Cr. 371 (RA)**

Dear Judge Abrams:

The Government writes in brief response to defendant Archer's letter regarding purported Sixth Amendment concerns regarding Michael Smith's testimony about the disclosure of conflicts of interest on the April 23, 2015.

Archer's concerns are illusory. First, a statement does not implicate the Confrontation Clause unless it is being offered for its truth. *See Tennessee v. Street*, 471 U.S. 409, 414 (1985) (admitting co-defendant's confession to rebut defendant's claim that his confession was coercively derived from co-defendant's); *United States v. Paulino*, 445 F.3d 211, 216-17 (2d Cir. 2006) (statements of defendant's father admitted to "aid the jury in understanding the course of events").

Second, only testimonial statements implicate the Confrontation Clause. A statement is "testimonial" when "in light of all the circumstances, viewed objectively," the 'primary purpose' of the conversation was to "creat[e] an out-of-court substitute for trial testimony." *Ohio v. Clark*, 135 S.Ct. 2173, 2180 (2015). The purpose of the disclosures on the April 23 call was clearly not to create a substitute for trial testimony.

In short, under Archer's argument all manner of inculpatory statements introduced routinely introduced at trial—for example, co-conspirators' statements on consensual recordings or Title III wiretaps—should be excluded under the Sixth Amendment. That is not the law, and for the reasons stated above and in last night's letter, Smith's testimony regarding the conflicts disclosures should be admitted.

Respectfully submitted,

ROBERT KHUZAMI

Attorney for the United States, Acting Under  
Authority Conferred by 28 U.S.C. § 515

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